NOTES OF CASES.

Municipal Corporations—Construction of Ordinance as to Explosives.—In Standard Oil Co. *v.* City of Birmingham, 79 So. 489, the supreme court of Alabama had before it an ordinance of the city of Birmingham providing that "gasolines, benzines, and naphthas shall have a specific gravity at 60 degrees Fahrenheit of not less than 58 or more than 84."

It was held that the ordinance being clearly expressed and unambiguous, will not be construed as if the word "specific" was omitted, and the words "degrees Baume" added at the end, or as though there was a decimal point before the 58 and 84, although, being void because unreasonable and incapable of performance as it stands, it would, by such construction, be made reasonable and capable of enforcement.

In speaking of the construction of ordinances the court said:

"It is very true, as is argued by the city, that courts will give ordinances or statutes that interpretation which will give them effect, if the language used is reasonably susceptible of such construction. As a rule, ordinances and statutes are to be given that construction which will uphold them if that construction be a reasonable one, and consistent with the language used. In a recent case, construing an ordinance of Birmingham, it was said:

'In determining the validity of ordinances, a reasonable construction will be given them; the judicial inclination being to sustain, rather than overthrow, them. 2 Dillon s Munic. Corp. (5th Ed.) § 646; Orme *v.* Tuscumbia, 150 Ala. 520, 43 South. 584. "Ordinances must, by fair and natural construction, be certain to a common intent." 28 Cyc. p. 354. "Common intent" is defined as "the natural sense given to words." 1 Bouv. Law Dict.; Black's Law Dict. Sloss Sheffield Co. *v.* Smith, 175 Ala. 260, 264, 57 South. 29, 30.

'Municipal ordinances are construed by the same rules as are statutes. Harbor Master, etc., *v.* Sutherland, 47 Ala. 511; 28 Cyc. pp. 388, 389, and notes thereon. No reason appears why ordinances and by-laws may not avail of the principles whereby reference statutes are construed and given effect, provided, of course, the municipality has the power to ordain as undertaken.' Id., 175 Ala. 265, 57 South. 30.

' "The fact that an ordinance covers matters which the city has no power to control is no reason why it should not be enforced as to those which it may control." City Council, etc., *v.* Shaddox, 138 Ala. 263, 266, 36 South. 369; Ex parte Cowart, 92 Ala. 94, 9 South. 225; Kettering *v.* Jacksonville, 50 Ill. 39; Ex parte Byrd, 84 Ala. 17, 4 South. 397, 5 Am. St. Rep. 328. "An ordinance, like a statute, may

be valid in some of its provisions and invalid as to others."' Id., 175 Ala. 267, 57 South. 30, 31.

'Whenever a question arises as to the reasonableness vel non of a municipal ordinance, which relates to a subject within the corporate jurisdiction, it will always be presumed to be reasonable, unless the contrary appears on the face of the law itself, or is established by proper evidence. Van Hook *v.* City of Selma, 70 Ala. 361, 45 Am. Rep. 85.' Miller *v.* Birmingham, 151 Ala. 471, 44 South. 388, 125 Am. St. Rep. 31."

Sales—Canned Goods.—In Ward *v.* Great Atlantic & Pacific Tea Co. (Mass.), 120 N. E. 225, it was held that a customer at a retail store ordinarily is bound to rely on the skill and experience of the seller in determining the kind of canned goods he will purchase, unless he demands goods of a definite brand or trade-name.

The court said: "It was said in Farrell *v.* Manhattan Market Co., 198 Mass. 271, 279, 280, 281, 84 N. E. 481, 485, (15 L. R. A. [N. S.] 884, 126 Am. St. Rep. 436, 15 Ann. Cas. 1076) a case arising before the Sales Act:

'Finally, provisions may be ordered by the purchaser in person in the dealer's shop, in such a way that it is made known to the dealer that his knowledge and skill are relied on to supply a wholesome food, and, if they are so ordered, he is liable if they are not fit to be eaten. * * * If the sale is by a dealer and the selection of food is left to him, it is an implied term or condition of the sale that the provisions sold shall be fit for food whether supplied under a pre-existing contract * * * or in response to an order not given in person * * * or even when the order is given in person in the dealer's shop, provided * * * that the selection is left to the dealer. * * * But, even when the sale is by a dealer, if the provisions are selected by the buyer and the selection is not left to the judgment and skill of the dealer, the general rule applies and the dealer is not liable (in the absence of knowledge by the dealer that the provisions are unsound) if provisions are not fit for food.'

The opinion in that case contains an exhaustive review of the authorities. See, also, in this connection, Race *v.* Krum, 222 N. Y. 410, 414, 118 N. E. 853; Cook *v.* Darling, 160 Mich. 475-481, 125 N. W. 411; Parks *v.* Alfes, 93 Kan. 334-337, 144 N. E. 202, L. R. A. 1915C, 179, and note L. R. A. 1917F 472 to 475. There is no room for the exercise of individual sagacity in picking out a particular can. The customer at a retail store is ordinarily bound to rely upon the skill and experience of the seller in determining the kind of canned goods which he will purchase, unless he demands goods of a definite brand or trade-name. The situation is quite different from the choice of a fowl or a piece of meat from a larger stock,